

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8616 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MOJI INVESTMENT PRIVATE LIMITED

Versus

UNION OF INDIA

Appearance:

MR DV PARIKH for Petitioners
MR HAROOBHAI MEHTA for Respondent No. 1
MS AVANI S MEHTA for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/12/97

ORAL JUDGEMENT (per C.K.THAKKER J.)

Rule. Mr.Haroobhai Mehta, Senior Standing Counsel appears for Respondent No.1 and Mrs. Avani S.Mehta appears for Respondent Nos.2 and 3 and they waive service of rule. In the facts and circumstances of the

case, the matter is taken up for final hearing to day.

This petition is filed against orders passed by the Collector (Appeals) on June 3, 1997, July 9, 1997 and September 3, 1997, Annexures H, J. and L respectively. It is the case of the petitioner that the petitioner is a Company carrying on business of manufacturing block boards. A dispute arose between the Excise Department and various Units of the petitioner company. According to the Company, it was entitled to claim certain exemption benefits in accordance with a notification issued on 1st March 1997 whereas, according to the authorities, the company was not entitled to those benefits.

An order was passed which was challenged before the tribunal. An application for stay was also submitted. It, however, appears that at the time of application for stay was to be heard due to heavy rains, the petitioner could not remain present and ex-parte order was passed. From the record, it appears that two such applications were placed for hearing and similar order were passed. Against one of such orders a petition was filed being Spl.C.A.No. 6902 of 1997 which came up before a Division Bench on 24th October 1997 and the following order was passed:

"Rule. Mr.H.M.Mehta, learned Senior Counsel,
waives service of Rule.

Heard. In the facts and circumstances of the case, the Appellate Authority is directed to rehear the application for stay made by the petitioner and pass appropriate speaking orders thereon. Such decision shall be rendered within a period of four weeks from to day. Till the stay application is decided, recovery of pre-deposit shall not be made. In light of the aforesaid, the appeal shall stand restored.

Rule is made absolute. No order as to costs."

The present case was another matter in which, a similar order was passed of rejection of application for stay.

In our opinion, therefore, the order passed in Spl.C.A.No. 6902 of 1997 would also govern the present case. No doubt, an affidavit is filed by one S.L.Meena, Assistant Commissioner of Central Excise and Customs, Division-I, Mehsana to day wherein, it is mentioned that

though it was stated that the petitiner could not remain present on the date of hearing on account of heavy rains, it made an application for grant of adjournment. Hence, the petitioner equally could have proceeded with the matter and the matter could have been disposed of on its merits. The learned counsel for the petitioner, however, stated that the party could not remain present and only an advocate presented application. It was impossible for the petitioner or any of its representatives due to heavy rains, to remain present.

In the facts and circumstances of the case, in our opinion, when in an identical matter, order is passed and that petition is allowed, it would be in the interest of justice to allow this petition also. Hence, the following order is passed:

This petition is allowed. Rule is made absolute. In the facts and circumstances of the case, the appellate authority is directed to rehear the application for stay made by the petitioner and pass appropriate speaking order thereon. Such decision shall be rendered within a period of four weeks from to day. Till the stay application is decided, recovery of pre-deposit shall not be made. In light of the aforesaid decision and finding, the appeal shall stand restored. In the facts and circumstances of the case, no order as to costs.

Dt. 22.12.1997. (C.K.THAKKER J.)

(R.P.DHOLAKIA J.)
